

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4027 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LEKHA A KHAMAR & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MRS KETTY A MEHTA for Petitioners

MR MUKESH PATEL for Respondents No. 1 and 2

None present for Respondents No. 4, 5, 7, 10 and 12

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/02/97

ORAL JUDGEMENT

1. The respondents No.3, 6, 8, 9, 11 and 13 to 21 have not been served as their notices were not received back. The counsel for the petitioners pray for the permission for deleting the names of those respondents to which the counsel for the respondents No.1 and 2 have no objection. Order accordingly. The names of respondents No.3, 6, 8, 9, 11 and 13 to 21 are ordered to be deleted.

The office is directed to make necessary endorsement of deletion of the names of these respondents in the title of this writ petition.

2. Heard learned counsel for the parties. The petitioners, seven in number, are Dy. Mamlatdars working under the administrative control of Collector, Ahmedabad, filed this Special Civil Application and prayer has been made for quashing and setting aside of the seniority list, circular, annexure 'D' dated 21st July, 1986 and seniority list, annexure 'J'.

3. The petitioners were appointed initially as Clerks in the Gujarat Non Secretariat Service by selection under the provisions of the Gujarat Non-Secretariat Clerks, Clerk Typists Recruitment Rules. The respondents No.3 to 21 were appointed as Typists and/or Clerk/Typist under the provisions of the same rules and were selected under the Central Recruitment Scheme like the petitioners. Reference has been made to the rules known as "Gujarat Non-Secretariat Clerks and Clerk Typists (Training and Examination) Rules, under which every Clerk and Clerk Typists has to pass the Pre-Service Training Examination. So far as the Typists are concerned, there is no Pre-Service Training Examination for them. The petitioners have been appointed much prior to the respondents No.3 to 21. The respondents No.3 to 16 were Typists, they were not required to pass the said Pre-Service Training Examination. So far as the respondents No.17 to 21 are concerned, the respondents No.17, 18, 19 and 21 being Clerk Typists, they were required to pass the said Pre-Service Training Examination, whereas the respondent No.20 was promoted from the post of Peon to the post of Clerk, and therefore, he was required to pass the Pre-Service Training Examination. Though the petitioners were appointed earlier to the respondents No.3 to 21 and are senior to them, but they were sent for Pre-Service Training later in point of time than the respondents No.17 to 21, and as stated earlier, the respondents No.3 to 16 were not required to pass any examination. As the petitioners passed the said examination later in point of time than the respondents No.17 to 21 and they have been given the seniority in the cadre of Clerk and Typist from the date of passing of the said examination, they have been placed junior to the respondents No.3 to 21.

4. The counsel for the petitioners relying on the decision of this Court in the case of Safimiya G. Malek vs. State of Gujarat reported in 1992 (1) GLR 704 contended that this matter is squarely covered in favour

of the petitioners by the said decision. This Court has decided in the aforesaid case that the seniority to the Clerks has to be assigned from the date of the initial appointment and not with respect to the date of passing of the aforesaid examination.

5. The counsel for the respondents is unable to give out how this matter is not covered by the said decision.

6. In the result, this Special Civil Application is allowed and the declaration as given by this Court in the case of Safimiya G. Malek vs. State of Gujarat (supra) is given in this case also, which reads as under:

In the result, the petitioners would succeed in the petition and the challenge that they have put forth in connection with respective seniority list will have to be upheld. The respective seniority lists and the reversion only based on these lists are therefore, struck down. The respondents are directed to refix the seniority on the basis of continuous officiation within a period of 3 months and thereafter, work out the consequences of these readjustments in accordance with the Rules. Rule in the petition is made absolute accordingly. Looking to the facts and circumstances of the case, there shall be no order as to costs.

7. The petitioners shall be entitled for all the consequential benefits which follows from this declaration. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-